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IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1975

No. 75-1141

WILLIAM M. REESE, SR., Petitioner

v.

UNITED STATES OF AMERICA

PETITION FOR REHEARING

Waggoner Carr
Robert L. Crider

ATTORNEYS FOR
PETITIONER

BLEED THROUGH

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WILLIAM M. REESE, SR., Petitioner

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PETITION FOR REHEARING

Petitioner, William M. Reese, Sr., in the above-entitled case respectfully petitions this court under rule 58(2), Supreme Court Rules for a rehearing on the decision of this court entered May 19, 1976 which affirmed the conviction by refusing to order the Trial Court to grant petitioner the right to withdraw his plea of Nolo Contendere, and in support of said Petition shows:

SCOPE OF PETITION

Mindful that the proper function of a rehearing petition is to direct attention to matters which are confined to intervening circumstances of substantial or controlling

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effect (e.g. Sanitory Refrigerator Co. v. Winters, 280 U.S. 30, 34 footnote 1; Massey v. United States, 291 U.S. 608) or to other substantial grounds available to petitioner although not previously presented (e.g. Scribner - Schroth Co. v. Cleveland Trust Co., 305 U.S. 47, 50), petitioner does not ask the Court to rehash his post claims regarding his "mental and physical condition."

The basis of this petition is the undue influence exerted by the U.S. Attorney and the attorneys from the Securities Exchange Commission on the the Petitioner and his attorneys which effectively destroyed any voluntariness of Petitioner's entry of a Plea of Nolo Contendere.

RESTATEMENT OF CASE

The Government has failed to point out that there were differences in the degree of seriousness of two informations filed. The first filed on May 3, 1974 alleged a petty offense. Mr. Bill Alexander defended Petitioner in the hearings concerning this information and informed the Court that Petitioner would enter a plea of nolo contendere provided an agreement could be reached with the Government. The Government was advised that Petitioner could not enter a plea of guilty because of pending civil litigation but would be willing to enter the plea of nolo contendere in order to save the time and expense of a lengthy trial to both the government and himself. However, the Government refused to accept the plea unless Petitioner would sign a statement admitting fraud. Petitioner refused to do so and Mr. Alexander requested

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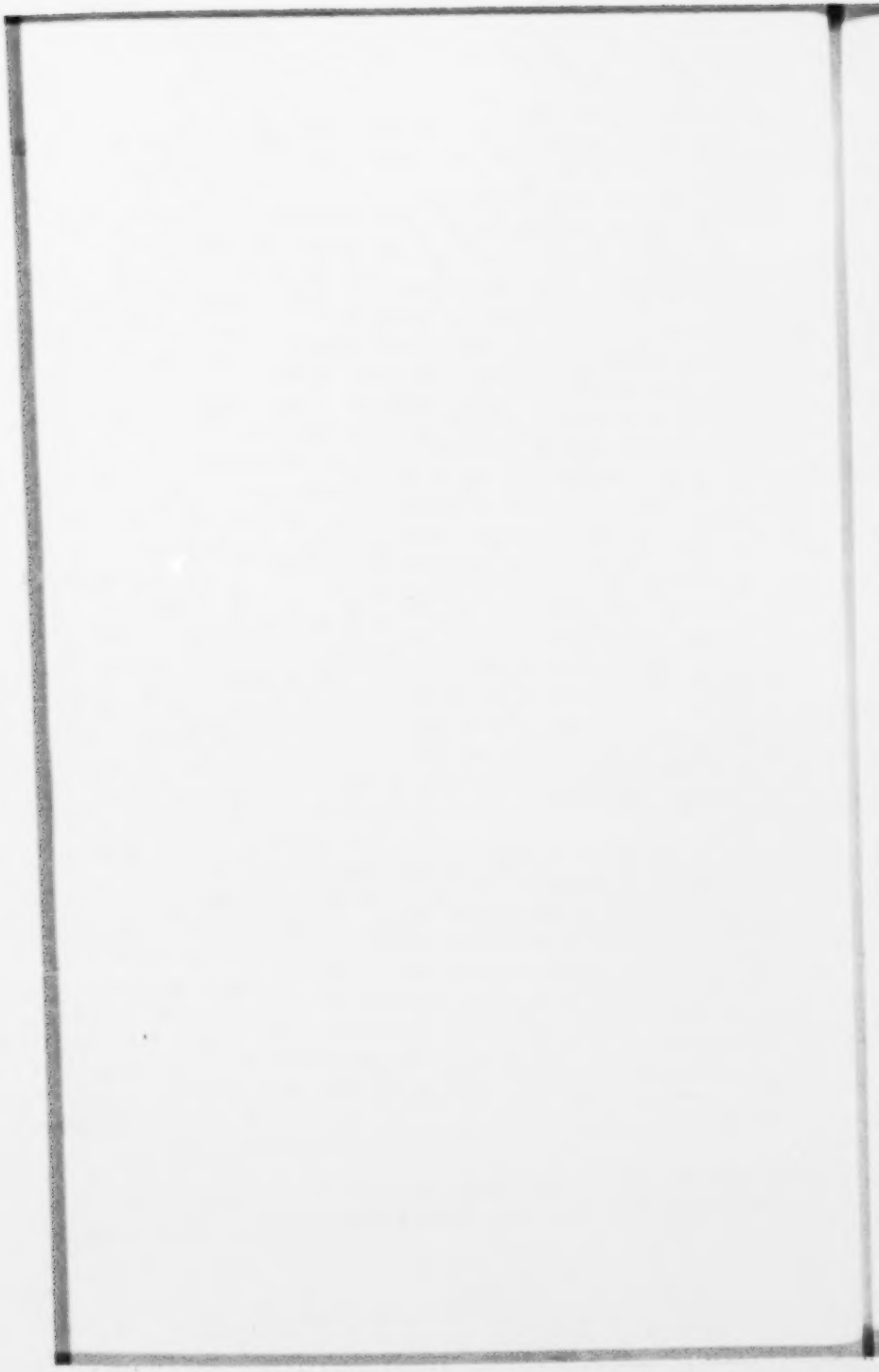
permission to withdraw and the Court allowed Petitioner time to acquire new counsel.

After Petitioner obtained another attorney, and expressed a desire to enter a plea of "not guilty" the Government rearraigned the Petitioner and then alleged he had committed a serious offense. The facts on which the Government relied for this information are the same as alleged in the first arraignment; therefore, the unmistakeable conclusion is the U.S. Attorneys are asking for a greater range of punishment simply because Petitioner insisted on his constitutional right to trial by jury. On the Sunday prior to going to trial, the Government's attorneys invited Mr. Guilford Jones to Ft. Worth, Texas, to review the records of the case. It is the Petitioners understanding that the tapes and other illegally obtained evidence that the Petitioner has complained of were shown and played for Petitioner's attorneys. Following the meeting with the Governments' attorneys, Mr. Jones voluntarily withdrew from the case (January 30, 1975). His Motion for Withdrawal was granted after Defendant had agreed to allow Mr. Emmett Colvin and Mr. Gary Jackson to represent him. The record does not reflect the fact that Petitioner was under the impression that Mr. Jones would still assist in the preparation of the case and would be present during the trial as much as his schedule would permit. Later, it turned out that Mr. Jones would not be present at all. This fact was discovered by Petitioner on February 2, 1975.

When the case was called to trial, it was obvious to the Petitioner that his case



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could not be adequately presented without Mr. Jones. Mr. Colvin announced in open court that an irreconcilable difference of opinion had developed as to the method, manner and means of proceeding with the defense and withdrew from the case(February 3, 1975).

Judge Taylor allowed Petitioner sixty (60) days to obtain new counsel. Petitioner obtained the services of Mr. Leonard E. Choate and Mr. Eddie Becker. Mr. Choate immediately began preparing to go to trial on May 5, 1975. However, on May 3, 1975 Mr. Choate wrote the Petitioner a letter in which he acknowledges Petitioner's desire to proceed on a plea of "not guilty", however it recites that "I cannot assure you of a successful defense. I will defend you to the best of my ability under the facts of this case; and as I have previously advised you, I am not a Security Exchange Commission attorney." (See Exhibit A). Petitioner submits to this Court that the only source of the facts at that time was the Government's attorney and was obviously another attempt by the Government to assert undue influence on Petitioner through his attorneys.

ARGUMENT

The Government insists that Petitioner is in no position to complain about illegally obtained evidence (Government's Brief page 8), however, Petitioner would urge the Court that the production of illegally obtained evidence to Petitioner's attorneys which in turn influenced their advice should be carefully reviewed by

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this court.

When the statement of facts are read as a whole, it is evident that the Government's attorneys applied unrelenting pressure on the Petitioner during every step of these proceedings. It is uncontroverted that the Government was well aware of all the circumstances at the time the Books and Records of the Petitioner and the American Southwest Development Corporation were seized by a civil subpoena duces tecum. The fact that the Trial Court refused to suppress this evidence surely must have influenced Petitioner's attorneys in this matter. Further, it is uncontroverted that the Government's attorneys met with Petitioner's attorneys and pointed out certain statements in the transcripts of telephone conversations allegedly between Government witnesses and Petitioner. When Petitioner subsequently discovered that these tapes had been tampered with and requested to withdraw his plea of "Nolo Contendere", he was advised it was too late to offer new evidence and that the Trial Court would not try the matter. And yet, it is evident that this material was used to influence the counsel given to the Petitioner by his attorneys. This Court stated in McMann v. Richardson, 397 U.S. 759 at 770, 771:

> "....When a plea of guilty is unintelligent and therefore vulnerable when motivated by a confession erroneously brought in evidence depends on an initial matter, not on whether a court would retrospectively consider counsel's advice right or wrong,

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but on whether that advice was within the range of competence demanded of attorneys in criminal cases...."

although there is no confession in this case, the court's refusal to suppress the Books and Records could only be tested after a trial and on appeal. The fact the Government had rearraigned the Petitioner on a serious offence after he had refused to plea to a petty offense certainly has a bearing on whether or not the Petitioner should consider this route. The further use of the tapes to influence the recommendations of Petitioner's attorneys should also be considered. It is uncontroverted that the U.S. Attorneys used these tapes for this purpose. Furthermore, when Petitioner offered to prove the tapes had been tampered with, his offer was rejected out of hand without any hearing to determine whether or not tainted evidence had been used to influence the defense.

The combination of the use of illegal evidence by the U.S. Attorneys and Petitioner's other mental and physical problems to-wit: (1) Bankruptcy which adversely effected his ability to pay for his defense (2) Internal Revenue Service investigation, (3) civil litigation had been filed (4) State of Texas criminal charges of violation of Blue Sky Laws, (5) medication, (6) complete physical exhaustion and (7) advice of counsel under the influence of U.S. Attorneys completely destroys the voluntariness and understanding necessary to allow this conviction to stand.

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CONCLUSION

Petitioner respectfully requests this Court to grant his Writ for Certiorari based on the foregoing argument or in the alternative order the trial court to hold a complete hearing with witnesses on whether or not the evidence complained of was illegally obtained. Following this hearing, the Trial Court should then hear argument on whether or not Petitioner would be allowed to withdraw his plea of "Nolo Contendere".

Respectfully submitted,

Waggoner Carr

Robert L. Crider

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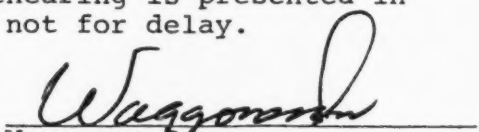
Austin, Texas 78701
(512) 472-5543

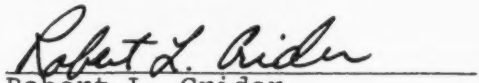
ATTORNEYS FOR PETITIONER

CERTIFICATE OF COUNSEL

We hereby certify that the above Petition for Rehearing is presented in good faith and not for delay.



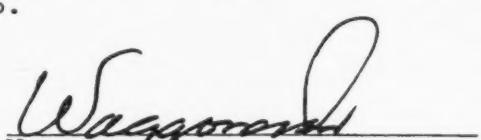
Waggoner Carr



Robert L. Crider

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Rehearing has been mailed by certified mail to Robert H. Bork, Solicitor General, on June 9, 1976.



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